



CFIUS Reform: Guidance on National Security Considerations

The U.S. Treasury Department, as chair of the Committee on Foreign Investment in the United States (CFIUS), and as required by the Foreign Investment & National Security Act of 2007, has issued guidance on the types of transactions that CFIUS has reviewed and that have presented national security considerations. The guidance also provides insight into how CFIUS identifies the national security effects of covered transactions.

Explains the relevance of national security considerations in the context of CFIUS reviews:

- *CFIUS's purpose*: Identify and address national security risk posed by covered transactions
- *National security risk*: Risk is a function of the interaction between threat and vulnerability, in light of the potential consequences of that interaction for U.S. national security
- *National security considerations*: Considerations are facts and circumstances, with respect to a covered transaction, that have potential national security implications.
- *Relevance of national security considerations*: CFIUS analyzes all national security considerations to assess whether a covered transaction poses national security risk. Transactions that present such considerations do not necessarily pose national security risk

Illustrates the types of transactions that have presented national security considerations:

- *Illustrative, not comprehensive*: Emphasizes that CFIUS considers all relevant facts and circumstances in each case, regardless of industry. Within the following two major categories, the guidance provides illustrations, not a comprehensive description:
 - *Nature of the U.S. business*: For example, national security considerations have been presented because the U.S. business has government contracts, has operations relevant to U.S. national security, or deals in certain advanced technologies or goods and services controlled for export
 - *Identity of the foreign person*: For example, national security considerations have been presented because of the track record of the foreign person acquiring control of the U.S. business, or the non-proliferation record of the person's country of origin
- *Foreign government control*: Constitutes a national security consideration, but the guidance addresses circumstances that may lessen its significance in a transaction
- *Corporate reorganizations*: Raise national security considerations only in exceptional cases

Clarifies the purpose of the guidance:

- CFIUS administers a voluntary notice system. Covered transactions reviewed by CFIUS receive a safe harbor from subsequent review. CFIUS may unilaterally review any covered transaction that does not have safe harbor, but it focuses solely on national security concerns
- The guidance does not set rules, nor discourage or encourage certain types of investment

For a link to the guidance, as well as additional information on CFIUS, please consult <http://www.treas.gov/offices/international-affairs/cfius/>.